IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Cesar Martinez; and Alonzo Rodriguez Plaintiffs, v. The City of Chicago, a municipal corporation; and Martin Acevedo, Star 9561; Javier Avalos, Star 18817; Defendants.	)	No. 07 C 422 Judge Feinerman

DEFENDANTS' JOINT RESPONSE TO PLAINTIFFS' MOTIONS *IN LIMINE*

Defendants Martin Acevedo, Javier Avalos, and the City of Chicago, by and through one of their attorneys, Christopher A. Wallace, respond to Plaintiffs' Motions *In Limine* as follows:

1. **Motion to bar Evidence of Past Arrests which did not Lead to Convictions.**

RESPONSE:

In Plaintiffs' first motion *in limine*, Plaintiffs move to bar "past arrests which did not lead to convictions." First, Plaintiffs fail to specify the meaning of "past arrests" and it is unclear whether Plaintiffs seek to bar all other arrest of Plaintiffs or only the arrests preceding the May 17, 2005, arrest. Plaintiffs' motion should be denied without prejudice until these ambiguous representations are given factual clarification. Second, Defendants have not even been afforded full disclosure of Plaintiff Alonzo Rodriguez's criminal history and have moved to compel information. (*See* Def.'s Motion to Compel, docket entry 175). Though Plaintiffs state "Alonzo Rodriguez has numerous arrests for various misdemeanors, none of which led to a conviction," in fact, Defendants are not sure that Alonzo Rodriguez is Plaintiff's true name as he is current wanted for arrest in Cook County under the name Veltran Flores and his arrest history reveals numerous aliases and multiple social security numbers. Based on information Defendants have been able to piece together, Alonzo Rodriguez been arrested at least twenty-four (24) times between January 2005 through February of 2009, many of which are under aliases Plaintiff admits to using. It is simply false to state none led to a conviction and also false to suggest that none of his arrests were for felonies. Alonzo Rodriguez, under the alias Veltran Flores, was convicted of retail theft and violating conditions of a bail bond in relation to a January 13, 2009, arrest. (*See* Certified Statement of Conviction, *People of the State of Illinois v. Veltran Flores*, case no. 09119235901, attached as exhibit 1). He served two days in jail and was sentenced to time served. Then, on February 7, 2009, Rodriguez, again using the name Veltran Flores, was arrested for retail theft and for battering the store security guard who tried to stop him. Currently, Rodriguez, under the alias Veltran Flores, is wanted for arrest in Cook County in relation to those charges. (*See* Certified Statement of Conviction, *People of the State of Illinois vs. Veltran Flores*, criminal case no. 09122146101, attached hereto as exhibit 2). On February 11, 2009, Rodriguez, this time apparently using the name Alonzo Rodriguez, was arrested for theft and later pled guilty. (*See* Certified Statement of Disposition, *People of the State of Illinois v. Alonzo Rodriguez*, criminal case no. 09119154301, attached hereto as exhibit 3). In addition to these recent arrests that Defendants are aware of, Alonzo Rodriguez does have a felony arrest for possession of heroin from a May 11, 2008, arrest. Defendants should at least have a complete history of Plaintiff before the Court entertains a motion to bar evidence that would otherwise be admissible if it had been properly disclosed. Thus, to the extent Plaintiffs' motion addresses Alonzo Rodriguez's past arrests, Plaintiffs' motion *in limine* should be denied pending resolution of Defendants' motion to compel.

With respect to Cesar Martinez, Plaintiffs state that "Plaintiff Cesar Martinez has two arrests other than the one at issue in this case. Both were for misdemeanors …once for disorderly conduct and once for criminal trespass and damage to property." To the extent Plaintiffs represent Martinez has only been arrested two other times, this is a false statement. To Defendants' knowledge based on Chicago Police Department records, Cesar Martinez has been arrested at least six (6) times, including for felony possession of a controlled substance on January 17, 2010, and a July 8, 2010, arrest for possession of cannabis and drinking alcohol on the public way; a case in which Martinez forfeited his bail bond.

Plaintiffs' argue that Plaintiffs' other arrests are irrelevant, inadmissible under Rule 403, inadmissible under Rule 404(b), and do not qualify for admission under Rule 609(b). But Cesar Martinez's arrests are relevant and admissible for purposes of damages. Defendants anticipate that Cesar Martinez testify as to the emotional damage and suffering that accompanied the arrest and pretrial detention, including the pain he experienced at having his family visit him in Cook County Jail and seeing the pain that caused them. Cesar Martinez's other arrests are admissible to show the nature, effect and extent of those alleged damages, and to provide a baseline against which to measure the suffering alleged in this matter. Thus, Plaintiffs' motion *in limine* no. 1 should be denied as it relates to Cesar Martinez.

2. Motion to Bar Evidence of Plaintiff Rodriguez's Misdemeanor Conviction

RESPONSE:

In Plaintiffs' second motion *in limine*, Plaintiffs seek to bar evidence of Alonzo Rodriguez's "recently pled guilty…misdemeanor [for] driving under the influence of alcohol in Texas." As stated in response to motion *in limine* no. 1, Defendants have not been able to confirm the circumstances of this arrest and have not been provided complete information from Plaintiff. Defendants' motion to compel to obtain information relative to this arrest is currently pending. (*See* Def.'s Motion to Compel, docket entry 175). Plaintiff Alonzo Rodriguez should not benefit from evasive and contumacious behavior in revealing information regarding his identity and arrest. It should be noted that Plaintiff's counsel represents the arrest and conviction were for DUI and Plaintiff was arrested and charged with reckless driving and DUI in this event. Defendants request this motion *in limine* be stricken or denied without prejudice until such time as Plaintiff has provided information sufficient to understand the circumstances of this arrest and conviction.

3. Motion to Bar Evidence of Criminal History or Past Arrests of Witnesses

RESPONSE:

In Plaintiffs' third motion *in limine*, Plaintiffs move to bar "any witnesses' criminal history." Plaintiffs state that "Jose Garcia will testify as a witness for Plaintiffs. Garcia has several convictions and arrests." Plaintiffs fail to state what those arrests and convictions relate to but nonetheless argue that Rule 402 and 403, as well as Rule 404(b), bar this evidence. Plaintiffs' motion should be denied.

Jose Garcia is not in fact a mere witness to this incident as Plaintiffs' motion suggest; he was the third occupant of the vehicle driven by Plaintiff Alonzo Rodriguez on May 17, 2005, and was arrested and charged with felony offenses along with the Plaintiffs on May 17, 2005. Garcia was never tried for these crimes because he was indicted for illegally reentering the United States and remanded to federal custody prior to trial. Jose Garcia was deposed in this matter after being writ from the custody of the Federal Correctional Institution-Yazoo City, Mississippi.

***Garcia's History*.**

Garcia's true name is not in fact "Jose Garcia" but rather Jose Alfredo Garcia-Mendoza and he uses the aliases "Jose Alfredo Martinez-Mendoza, Jose Alfredo Garcia and Jose Alfredo Martinez" as reflected in his guilty plea for illegally reentering the United States after deportation and removal. (*See* Plea Agreement – *USA vs. Jose Alfredo Garcia-Mendoza*, 05 CR 581, attached as exhibit 4). Garcia was sentenced to 57 months imprisonment. This violation constitutes a felony conviction and his 57 month sentence to prison was based, in part, on what the government established was "a pattern of violent and dangerous behavior directed toward law enforcement officers and others." (*See* Government's Response to Defendant's Sentencing Memorandum, p. 13, attached as exhibit 5). Garcia was convicted in relation to an October 8, 1993, arrest under the alias "Jose Alfredo Martinez" for an incident in Texas wherein he struck a 15 year-old victim to steal his guitar. (Ex. 5, p. 13). Following his arrest, he "was belligerent to the arresting police officers and attempted to kick them several times." (Ex. 5, p. 13). In addition, Garcia apparently was taken to a hospital where he was "belligerent and uncooperative towards the hospital staff and the police officers, and at one point, told one of the police officers, 'I'm going to shoot a bullet in your mouth and fuck you up when I get out of jail." (*Id.*). Furthermore, during this 1993 arrest, he "attempted to and/or did take a firearm from a peace officer by forcibly removing the firearm from the officer's holster with the intention of harming the officer and a third person." (*Id.*). Garcia was sentenced to concurrent 8 year prison terms on the charges and subsequently removed from the United States in 2001 under the name of "Jose Alfredo Martinez-Mendoza." (Plea Agreement, ¶ 5). In addition to this conviction, Garcia has a felony conviction for an April 9, 1993, burglary under the alias "Jose Alfredo Martinez" in Dallas County, Texas, and was sentenced to four years imprisonment. (Plea Agreement, ¶ 6(f)).

Garcia, aged 32 on the date of the incident, testified that he is a gang member of Sureños 13 and was dressed like a gang member on May 17, 2005, when he was with Rodriguez and Martinez. (Excerpts from the Deposition of Jose Garcia Dep. pp. 11:11 – 13:23, 106:23 – 107:11; 139:4-11, attached hereto as exhibit 6). According to Garcia, he arrived in Chicago from Mexico a few months prior to May 17, 2005, and was approached by Martinez and Rodriguez because they were curious about the Sureños 13 gang. (Garcia Dep. pp. 11:11 – 13:23, 129:17 – 133:20, 138:10-21). Garcia saw Martinez and Rodriguez were "wannabes" who looked up to him, thought he was "something bigger" and wanted to know more about the gang, "how they act," "what they do." (Garcia Dep. pp. 133:7-20, 194:21 – 195:14). Garcia testified that Rodriguez and Martinez identified themselves as Sureños 13 gang members. (Garcia Dep. 129:17-130:10; 138:10-21). Garcia confirmed that the S XIII tattooed on Plaintiffs' hands are Sureños 13 gang identifiers. (Garcia Dep. pp. 128:5 – 129:16, 137:11 – 138:2). Garcia testified that one of the rules related to Sureños 13 gang membership is "no snitching." (Garcia Dep. p. 163:12-16). Garcia, as stated above, was convicted in Texas and served nearly 8 years in the Texas Department of Corrections for robbery, disarming a police officer and retaliation. (Garcia Dep. pp. 147:19 – 148:7). Most insightful to this case, Garcia testified that he would fight the police as a means of garnering respect within the gang and "as part of the Sureño code." (Garcia Dep. p. 187:15-21).

Garcia's criminal history is clearly relevant and admissible. Defendants' theory of the case centers around Plaintiffs and Garcia being gang members who attacked the two defendant officers and as the aggressors were acting with purpose, intent, motive, bias and in a concerted effort on May 17, 2005, consistent with the Sureños 13 tenets and an ethos that rewards criminality, falsity and anti-social conduct, *i.e.* the essence of what it means to be a gang member in Sureños 13, "no snitching," and fighting the police for respect. Plaintiffs deny gang membership, of course, and claim they were simply lost on their way to Martinez's aunt's house and the officers, for no reason at all, stopped them and began beating them.

Garcia's 2005 felony conviction under 05 CR 581 with a 57 month sentence and 1993 felony conviction with 3 concurrent 8 year sentences fit within Rule 609. Moreover, the convictions reflect Garcia's aliases and strike to the heart of his credibility in terms of character for truthfulness and his bias against police officers. Rule 608(b) likewise supports admissibility. *See*, *e.g.*, *U.S. v. Davis*, 77 Fed. Appx. 902, 904 (7th Cir. 2003)(cross examination inquiry into witness's use of false names and dates of birth allowed under FRE 608(b)); *United States v. Ojeda*, 23 F.3d 1473, 1477 (8th Cir.1994)("If a man would lie about his name, a jury may reasonably infer that he would lie about other matters, even on the witness stand.") *citing Lyda v. United States*, 321 F.2d 788, 793 (9th Cir.1963)(use of false names bears directly on a witness's veracity; "[i]f a man lie about his own name, might he not tell other lies?"); *see also Brundidge v. City of Buffalo*, 79 F.Supp.2d 219, 227 (W.D.N.Y. 1999)(cross-examination permitted on plaintiffs' uses of false names and phony Social Security numbers); *Fletcher v. City of New York,* 54 F.Supp.2d 328, 333 (S.D.N.Y. 1999)(18 aliases admissible under 608(b) as evidence of character for untruthfulness). Plaintiffs should not be allowed to provide the jury a completely sanitized version of Garcia's testimony without providing any measure by which a jury could weigh his credibility. This is especially true given that "Jose Garcia" is not likely to be called to testify in person in this matter.

Plaintiffs' motion *in limine* no. 3 should be denied.

4. Motion to Bar any Evidence or Testimony Regarding the Immigration or Citizenship Status of Plaintiffs or Witnesses

RESPONSE:

In their motion *in limine* no. 4, Plaintiffs seek to bar Defendants from introducing "evidence regarding Plaintiffs' or any witnesses' immigration or citizenship status." Plaintiffs argue that such evidence is "wholly irrelevant" and, in any event, "highly prejudicial." First, Plaintiffs utterly fail to articulate what they mean by "immigration status" and are completely vague in terms of what evidence the Plaintiffs actually seek to bar at trial. Second, aside from failing to specify what evidence they intend to bar with this motion, Plaintiffs' argument that because "Plaintiffs have not made any claim for lost wages in this case, therefore their legal authorization to work is also irrelevant to damages" entirely misses the mark. With respect to Plaintiff Cesar Martinez, Defendants have no knowledge that he has an "immigration status" at all. With respect to Plaintiff Alonzo Rodriguez, the evidence revealed in this case is that Alonzo Rodriguez uses aliases, uses different social security numbers, is currently wanted for arrest in Cook County under the name Veltran Flores, and, according to his counsel he is somewhere in Mexico and probably will not be here for trial. Defendants have filed a motion to compel before the trial Court to determine certain information relating to Alonzo Rodriguez's identity to clarify issues relating to this information. (*See* Def.'s Motion to Compel, docket entry 175). That evidence is absolutely relevant to assess his credibility. Indeed, it is relevant to establish his identity, which Plaintiffs cannot even confirm.

With respect to Jose Garcia, as set forth in Defendants' response to motion in limine no. 3, the evidence is that he uses the name "Jose Garcia" but his true name is apparently Jose Alfredo Garcia-Mendoza, at least in this jurisdiction, and has used the aliases Jose Alfredo Martinez-Mendoza, Jose Alfredo Garcia and Jose Alfredo Martinez. He has been deported at least twice for illegal re-entering the United States, the latest of which stems from his apprehension in the May 17, 2005, arrest which is the subject of this case wherein he was found by the Department of Homeland Security, indicted, and sentenced to 57 months in federal prison base, in part, on what the government established was "a pattern of violent and dangerous behavior directed toward law enforcement officers and others." (Ex. 5, p. 13).

Plaintiffs' attempt to skirt these concepts by casting this information as "immigration status" without giving credence to the obvious credibility issues raised by the information is regrettable. Plaintiffs must concede that Jose Garcia is not his real name as his true name is Jose Alfredo Garcia-Mendoza. Moreover, his use of aliases strikes to his character for truthfulness. *See, e.g., U.S. v. Davis*, 77 Fed. Appx. 902, 904 (7th Cir. 2003)(cross examination inquiry into witness's use of false names and dates of birth allowed under FRE 608(b)); *United States v. Ojeda,* 23 F.3d 1473, 1477 (8th Cir.1994)("If a man would lie about his name, a jury may reasonably infer that he would lie about other matters, even on the witness stand.") *citing Lyda v. United States,* 321 F.2d 788, 793 (9th Cir.1963)(use of false names bears directly on a witness's veracity; "[i]f a man lie about his own name, might he not tell other lies?"); *see also Brundidge v. City of Buffalo*, 79 F.Supp.2d 219, 227 (W.D.N.Y. 1999)(cross-examination permitted on plaintiffs' uses of false names and phony Social

Security numbers); *Fletcher v. City of New York,* 54 F.Supp.2d 328, 333 (S.D.N.Y. 1999)(18 aliases admissible under 608(b) as evidence of character for untruthfulness).

Furthermore, Plaintiff Alonzo Rodriguez admits he uses the name Rene Rodriguez and Veltran Flores, is currently wanted for arrest in Cook County under the name Veltran Flores, fraudulently uses social security numbers, and is possibly the subject of federal proceedings in Texas. Moreover, it appears Plaintiff uses at least the following other aliases: Nestor Flores, Nester Flores, Diego Herrera Gonzalez, Alonzo Rodriguez-Discareno, and Alonzo Rodriguez-Santana. At this juncture, Alonzo Rodriguez' identity remains a mystery. Defendants hope certain matters will be clarified in response to Defendants' motion to compel. Because such information remains incomplete, Plaintiffs' motion should be denied with respect to Alonzo Rodriguez.

5. Motion to Bar Evidence of Gang Affiliation or Tattoos of Plaintiffs of Any Witness

RESPONSE:

In Plaintiff's fifth motion *in limine*, Plaintiffs move to bar "Defendants from eliciting any testimony at trial regarding the alleged gang affiliation of Plaintiffs and any witnesses." Plaintiffs' motion completely fails to apprise this Court that Judge Dow has already ruled on this issue in response to Plaintiffs' motion to bar this evidence at trial. Judge Dow's opinion *Martinez, et al. v. City of Chicago*, *et al.*, No. 07 C 422, 2009 WL 3462052, *1 (N.D. Ill. Oct. 23, 2009), is attached hereto as exhibit 7. Plaintiffs' motion *in limine* is virtually identical, raising the exact same legal arguments and at points using the exact same phrasing, as their motion to bar Defendants' gang expert. (*See* Pl. Mot. to Bar Defendants' Gang Expert, filed under docket entry 115). Plaintiffs' arguments have been carefully considered and rejected by Judge Dow and their motion *in limin*e offers no basis to conclude Judge Dow's opinion was manifestly erroneous or that their has been a change in law warranting revisiting the issue. *See, e.g., Minch v. City of Chicago*, 486 F.3d 294, 301 (7th Cir. 2007).

That Plaintiffs have failed to apprise the Court of this ruling is regrettable. For the reasons already stated in Judge Dow's memorandum and opinion, Plaintiffs' motion *in limine* must be denied.

6. Motion to Bar Evidence of Alleged Drug Use by Plaintiff Alonzo Rodriguez

RESPONSE:

In Plaintiffs' sixth motion *in limine*, Plaintiffs move to bar Defendants from "introducing evidence about prior drug use by Plaintiff Rodriguez." Plaintiffs argue that Defendants may seek to introduce evidence that Rodriguez is a "drug user" and claim such evidence should be barred as irrelevant, unfairly prejudicial under Rule 403 and improper character evidence under Rule 404. Plaintiffs' arguments miss the mark.

Officer Acevedo and Avalos were initially drawn to the attention of the car Rodriguez was driving based on the way he was driving it. They suspected the driver could be impaired. Toxicology reports in this matter demonstrate Alonzo Rodriguez, along with having a .BAC above the legal limit, had morphine in his system as well as several substances used in cutting street heroin. Judge Dow has ruled that Defendants' toxicology expert cannot offer opinions that Rodriguez was impaired by the morphine in his system at the time of the offense or that the morphine exacerbated his impairment from the alcohol; however, his rulings do not preclude the fact that Rodriguez had heroin in his system or that he took the heroin from 4 to 24 hours ahead of time. *See Martinez, et al. v. City of Chicago, et al.*, 2009 WL 3462052 at * 5-9). Rodriguez testified that he did not use any heroin or drugs in the 24 hours prior to the incident. The presence of the substance in Rodriguez's blood coupled with his denial under oath speaks to his credibility. As such, Plaintiffs' motion *in limine* no. 6 should be denied.

Respectfully submitted,

/s/ Christopher A. Wallace

Christopher A. Wallace
Attorney for Defendants

City of Chicago Department of Law
30 N. LaSalle St.
Suite 900
Chicago, IL 60602
T: (312) 742-6408
F: (312) 744-6566
ARDC#: 6278655

CERTIFICATE OF SERVICE

I, Christopher Wallace, hereby certify that on, Friday, January 21, 2011, I caused a copy of Defendants' Responses to Plaintiffs' Motions *In Limine* to be served upon all counsel of record by filing the same via the Court's ECF system.

/s/ Christopher Wallace
Christopher Wallace